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THE SENATE

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TWELFTH PARLIAMENT – FIFTH SESSION

STANDING COMMITTEE ON TOURISM, TRADE AND
INDUSTRIALIZATION

REPORT ON THE STREET VENDORS (PROTECTION AND
LIVELIHOOD) BILL, SENATE BILLNO. 7 OF 2021

PAPERS LAID	
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CLERK AT THE TABLE	Phyllis M.

CLERKS CHAMBER
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FEBRUARY, 2022



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ABBREVIATIONS AND ACRONYMS

CBD – Central Business District
CoG - Council of Governors
ICPAK - Certified Public Accountants
MSE – Micro and Small Enterprises
NGEC - National Gender and Equality Commission
PWDs - Persons with Disabilities
SMEs – Small and Medium Enterprises

1.0 PREFACE

I wish to table the Report of the Standing Committee on Tourism, Trade and Industrialization on the consideration of the Street Vendors (Protection & Livelihoods) Bill, 2021 pursuant to Standing Order 143.

The Bill seeks to provide a framework to regulate the business of street vending in the country. The basis for the framework is that currently no legal framework governing the street vending business. As such the bill envisions to address the challenges being experienced by the vendors by enhancing their ability to earn and living and the county government in regulating the trade.

The specific objects which the Bill seeks to achieve include the following¹:-

- i) entrenchment of the rights of informal trading;
- ii) regulation of informal trading, areas of conduct of such trade and licensing by counties;
- iii) designation and use of public space for informal trading;
- iv) effective organization and regulation of informal traders; and
- v) public participation in the regulation of street vending.

1.1 Committee Mandate

The Standing Committee on Tourism, Trade and Industrialization is established pursuant to Standing Order 218(3) of the Senate. As set out in the Second Schedule, the Committee is mandated to consider *all matters relating trade, industrialization, tourism, cooperatives, investment and divestiture policies.*

1.2 Committee Membership

The Standing Committee on Tourism, Trade and Industrialization comprises of the following Members:-

- | | |
|--|--------------------|
| 1) Sen. (Dr.) Abdullahi Ibrahim Ali, CBS, MP | - Chairperson |
| 2) Sen. (Dr.) Gertrude Musuruve Inimah, MP | - Vice Chairperson |
| 3) Sen. (CPA) Farhiya Haji, MP | - Member |
| 4) Sen. (Prof.) Kithure Kindiki, EGH, MP | - Member |
| 5) Sen. (Dr.) Agnes Zani, CBS MP | - Member |
| 6) Sen. Wario Golich Juma, MP | - Member |
| 7) Sen. Mercy Chebeni, MP | - Member |
| 8) Sen. Mohamed Faki, MP | - Member |
| 9) Sen. Philip Mpaayei, MP | - Member |

1.3 Consideration of the Street Vendors (Protection & Livelihoods) Bill, 2021

¹ Clause 3, The Street Vendors (Protection and Livelihood) Bill, 2021

Mr. Speaker, Sir,

The Street Vendors (Protection & Livelihoods) Bill, 2021 was read for the first time on 11th May 2021 and thereafter committed to the Standing Committee on Tourism, Trade and Industrialization pursuant to Article 118 of the Constitution and Standing Order No....

The Committee held three (3) sittings to consider the Bill. Two of the meetings were in-house meetings to first consider the contents of the bill and second to review the various proposed amendments from the various stakeholder. The Committee also held a public hearing session on 14th July, 2021 with various stakeholders in the sector. The following stakeholders were present in the meeting and further shared their thoughts on the bill with possible proposals for amendments of the various clauses. The Institute of Certified Public Accountants (ICPAK), Council of Governors (CoG) and National Gender and Equality Commission (NGEC). The emerging themes arising from the deliberations are included in the report and further guided the drafting of the amendments on bill. The recommendations arising from the deliberations are also included in the report.

1.4 Public Memoranda and Views

Mr. Speaker, Sir,

On 8th May, 2021, the Committee placed advertisements on the local dailies (Daily Nation newspapers) calling for views and submissions from the general public on the Bill. The Committee received submissions from the following stakeholders: - ICPAK, CoG and NGEC.

1.5 Committee Observations and Recommendations

Mr. Speaker, Sir,

While considering the Bill, the Committee made the following observations that;

- (a) The Street Vendors (Protection and Livelihood) Bill, 2021 is timely since if enacted will provide the much needed framework to regulate the business of street vending in the counties. As such this is expected to increase County revenue collection while at the same time provide a sustainable source of livelihood to vendors.
- (b) There is currently no legal framework governing the street vending business per se hence the persisting challenges being experienced by the county government in regulating the trade. Further, India's street vending Act of 2014 which the bill has borrowed heavily from, was preceded by the Street Vendors policy 2004 revised as the National policy on urban street vendors, 2009. This may therefore call for the Executives' efforts to develop a policy framework on this key sub-sector of the SMEs.
- (c) The specific objects of the bill as provided in clause 3 (three) of the bill are in line with Part 1 and Part 2 of Chapter Four (on the Bill of Rights) of the Constitution.

- (d) The bill outlines the respective functions of the National and County government in so far as the regulation of street vending is concerned. For instance the bill empowers the Cabinet Secretary to designate a unit within the Ministry to deal with matters vending. It was however felt that such provisions ought to be harmonized in line with the Fourth Schedule of the Constitution. The argument is that the Schedule devolves trade, development and regulation. Further, that markets were unbundled and transferred to the Counties vide the Kenya Gazette supplement No. 10 of 1st February 2013.
- (e) Taking into consideration that at least 80 percent of youth rely on informal economy and retail services, the framework is expected to decriminalize street vending. The implication of these is that it will offer the youth and opportunity to earn a livelihood while progressively address youth unemployment. Currently, youth unemployment in the county stands at 7.24 percent (2020)².
- (f) The success of vending activities including the development of any supporting regulatory framework calls for deliberate planning and adequate consultation among the various stakeholders.
- (g) The success of street vending activities is dependent on the availability of other supporting infrastructure and facilities like sanitation, security. The bill has attempted to address for this gap by providing of the rights and obligations of the street vendors.
- (h) There is close relationship between street vending activities and the revolutionization of the twenty four (24) hour economy.
- (i) Counties will need to leverage and increase their uptake in information technology in a bid to streamline and guarantee quality services including licensing and registration of street vendors.

1.6 Committee's Recommendations

Following the Committee interactions with the Street Vendors (Protection and Livelihood) Bill 2021 and the subsequent engagement with the relevant stakeholder as highlighted section 3.1 of the report, the Committee harmonized the amendments to be tabled during the Committee Stage of the Bill. The following are some of the broad areas of amendments-

- (a) Interpretation
- (b) Street vending units, the headquarters, director and staff of the unit
- (c) Registration of street vendors
- (d) Designation of vending centres and vending areas for PWDs
- (e) Fines and penalties
- (f) Right to quiet possession of goods

1.7 Acknowledgement

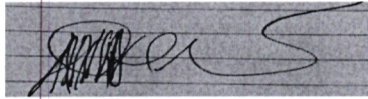
Mr. Speaker Sir,

² Kenya National Bureau of Statistics *'Economic Survey 2020*

The Committee wishes to acknowledge the time and considerable effort made by all stakeholders by taking time to appear before the Committee. Further the Committee appreciates the stakeholders for providing information through elaborate submissions. I also wish to express my gratitude to my colleagues for their thoughtful input and engaged contributions to the matter. Further, the Committee is indebted to the Office of the Speaker and the Clerk of the Senate for facilitating all the actions and interactions that led to the production of this report.

Mr. Speaker Sir,

It is now my pleasant duty, pursuant to Standing Order 143 to table the report of the Standing Committee on Tourism, Trade and Industrialization on the the Street Vendors (Protection and Livelihood) bill, Senate Bill No. 7 of 2021.



Signed.....Dated 2nd March, 2022

SEN. (DR.) ABDULLAHI IBRAHIM ALI, CBS, MP

(CHAIRPERSON, STANDING COMMITTEE ON TOURISM, TRADE AND INDUSTRIALIZATION)

2.0 BACKGROUND

2.1 Key Highlights of the Street Vendors (Protection & livelihoods) Bill, 2021

The Street Vendors (Protection and Livelihood) Bill (Senate Bills No.7) of 2021 was published in the Kenya Gazette Supplement No. 27 of 8th March 2021. The Bill went through the first reading on the 11th May 2021 and subsequently committed to the Committee on Trade, Tourism and Industrialization. The Bill is for an act of Parliament to provide a legal framework for the recognition, protection and regulation of street vending in Kenya, the identification of minimum standards for street vending; and connected purposes. The principal object of the bill is to provide a framework to regulate the business of street vending in the country.

The Bill provides for the following key areas³:-

- (i) *Part II* on the regulation of street vendors. The bill creates a street vendors unit with within the Ministry headed by a director for purposes of regulating the sub-sector. The functions of the unit include maintaining of a vendors register, development of the minimum standards of conduct of street vending including prescribing fees, data collection on vending activities and utilization of the same and engaging the relevant stakeholder in ensuring planning for infrastructure and design of street vending zones among others. In undertaking the foregoing functions, the unit will consult and engage the various county governments
- (ii) *Part III* provides for the designation of county vending zones to include restriction-free vending zones, restricted vending zones or no-vending zones and their modalities for operation. Further the bill obligates the county governments to progressively provide for the construction and maintenance of these vending centres to enable the carrying out of street vending activities.
- (iii) *Part IV* provides for the registration and licensing of the street vendors. This bill bestows this responsibility to the respective county government upon which the registers shall be shared with the unit at the national level for collation. This section further legitimizes a vendor through payment of fees and issuance of certificate of registration and vending license.
- (iv) The bill further outlines the terms and conditions of the vending license and its revocation.
- (v) *Part V* outlines the right and obligations of both the street vendors and the County governments and subsequent offences and penalties.
- (vi) *Part VI* provides for miscellaneous provisions including the general penalties.

³ The Street Vendors (Protection and Livelihood) Bill, 2021

2.2 Unpacking the Bill: Street Vending in Kenya and a Comparative Analysis on Vending Laws

The Status of Street Vending in Kenya

In Kenya, street vending is classified under Micro and Small Enterprises (MSE). It is regarded as one of Kenya's major informal sector activity providing self-employment, income, and goods at affordable prices to a majority of Kenyans. The number of street vendors in the country increases daily. Street vending is a common phenomenon in almost all urban and peri-urban areas and as such, vendors are over one-third of the urban and peri-urban population. The reason for vendors' preference to operate in the central business district is linked to access to market. This phenomenon is however not peculiar to Kenya, as it is common in most developing countries and even advanced economies and cities across the world, including Johannesburg in Africa etc.

Despite the foregoing reality, concerns have been rife that the government has not fully recognised street vending as an important form of livelihood. This explains the minimal facilitation in terms of legal frameworks and adequate planning and resources. Street vendors are also regarded by the public and law enforcement agencies as a nuisance and a source of insecurity, noise, confusion and congestion on the streets. The results are that the streets are characterised by running battles between street vendors and law enforcers trying to arrest or forcibly eject them from the streets.

The closest street vending has been recognised is between 2000 and 2008. The development plans at that time provided measures aimed at ensuring the control and regulation of hawking within CBD. As a result, most urban local authorities began implementing the policy albeit with challenges. For example the reliance to allow street traders within the inner circle of the CBD, lack of adequate space for street vendors within CBD, local authorities intention to charge fees for temporary spaces as traders viewed the same positions as permanent and the lack infrastructure and congestion. So far, the interventions are yet to be considered successful. For example, in Nairobi County, attempts to relocate the vendors to permanent markets including Muthurwa, Mwariro and Kirindini have proved to be problematic and chaotic. Observations have been made where some move to new locations but new vendors take up the spaces they vacate on the streets areas. The problem has been exacerbated by the fact that there is no register of informal traders in the city, making their regulation impossible.

Challenges exist in the regulation and management of street vending. Existing regulations (majority of them outdated) failed to incorporate street vending in urban planning regulations; impose harsh penalties for offences related to street vending; condone the violation of the rights of street vendors by the authorities thereby undermining their livelihoods. These laws adopt are mostly policing within appropriate policies bordering on expensive daily charges, poor and insecure working conditions, inappropriate hours of business, poor location of business among others.

No policy and legal framework exists in the regulation of vending activities. However, there exists the Micro and Small Enterprises Act, No.55 of 2012 is key for the promotion, development and registration of micro and small enterprises through the establishment of the Micro and Small Enterprises (MSE) Authority. As regards the policy question on the regulation of street vending, the following are key provision of the Micro and Small Enterprises Act, 2012⁴:-

Section 2 on interpretation espouses micro enterprises as firm, trade, service, industry or business activity (i) who annual turnover does not exceed Ksh 500,000 and employs less than 10 people

Section 3 on the objective and purpose of the Act provide the legal and institutional framework for the promotion, development and regulation of micro and small enterprise by providing an enabling environment among others.

Section 4 (Part II) provides for the regulation of MSEs thereby creating the office of the registrar of MSEs. Further, Part III establishes the MSE Authority.

Section 29 provides for the traders are representation in the in the Authority

Section 31 provides for the functions of the Authority among the core functions are the formulation and review of policies and programs for MSEs, and the monitoring and evaluation of the implemented and existing policies.

Section 46 outlines the development and promotion of MSEs including zoning for land for development of SMEs

Section 47 considers the development of infrastructure

Section 53 provides for the MSE development fund.

Comparative Studies

Street vending is a problem the world over and no country is immune. While no country provides a perfect example on how to manage this trade, Kenya could draw some lessons from the Indian and South African experiences. South Africa and India are both developing countries as is Kenya but have better legal and institutional arrangements on street vending.

Lessons from Kakamega (Kenya)

A study⁵ by P. Ngome and C Mulinya, found that in Kakamega town, street trade is the source of employment and livelihood to the migrants and the communities around the town as most of the respondents said they depended on it for livelihood. The study also revealed that Kakamega County Integrated Development Plan (2013) highlighted the programmes aimed at assisting the growth of SMEs but very little has been achieved for the street traders. The study findings also reveal that the county government introduced metallic kiosk stalls to the street traders in order to settle them. However, this program was not effective as some of these stalls were installed in areas where the traders could not access their potential buyers. In addition,

⁴ Republic of Kenya, Micro and Small Enterprises Act. No. 55 of 2012

⁵ Ngome, P. and Mulinya, C, 'The Challenge of integrating street trade in the urban development plan and policies: Kakamega Town, Kenya. IOSR Journal of Humanities and Social Sciences, Vol. 23, Issue 7. Ver 8(July 2018) PP 78 -89.

some of the traders complained that the County market stalls and the metallic kiosk stalls charged high rent yet these traders operated on little capital.

The study also noted that disorganization in the town, street trading activities has contributed to congestion on the streets in the CBD as traders had encroached onto the streets by displaying their goods on sidewalks of the main roads causing obstruction. The *bodabodas* and *tuktuk* riders parked their motorcycles along the streets causing congestion, traffic jams and sometimes contributing to accidents on the roads. In addition, street trading activities contributed to litter accumulation in the places of heavy concentration of people.

As regards planning and resources, the study further revealed that integrating street trading activities in the town plan is hampered by limited resources. This meant that projects likely to benefit the vendors like the provision of waste disposal bins, toilet facilities, storage facilities and the modern metallic kiosks remain unimplemented.

Lessons from India and South Africa⁶

India's Constitution guarantees the right to a livelihood. The advantage of this is the express provision for the right to seek legal redress. India, for example is leading in public interest litigation on street vending. India and South Africa (State and local government authorities) provides for legally endorsed zones for street vendors within towns. In Rosebank in Johannesburg South Africa, for instance, the local authority has closed some streets and designated them as zones for street vendors.

The Supreme Court of India in *Bombay Hawker's Union v Bombay Municipal Corporation* directed each city of the Union to establish special 'hawking' zones. Besides, local authorities in India and South Africa have constructed stands and markets for street vendors. They have also allocated certain days when street vendors can operate in certain parts of the central business district, especially weekends and public holidays, when the streets are not very busy.

In terms of legal framework, India enacted the Street vendors (protection of livelihood & regulation of street vending Act 2014, an act of Parliament of India to regulate street vendors in public places and protect their rights hence social security and livelihood rights to street vendors. The Act also protects legitimate street vendors from harassment from police and local authorities, demarcates the vending zones on the basis of traditional markets while at the same time establishing effective grievance redress and dispute resolution mechanisms.

It is however important to note that the Act was preceded by the Street Vendors policy 2004 revised as the National policy on urban street vendors, 2009.

Safe Side Walk Vending Act (SB 946)

Safe side walk vending Act is a 2018 (SB 946) California law whose purpose is to decriminalise and legalise street vending throughout the state under certain conditions. The SB 946 allows

⁶ Roever, S. (2016). Informal Trade Meets Informal Governance: Street Vendors and Legal Reform in India, South Africa, and Peru. *Cityscape*, 18(1), 27-46. Retrieved May 17, 2021, from <http://www.jstor.org/stable/26328239>

local law enforcement to regulate street vendors where side walk traffic is light and when the activities of the vendors are not infringing on activities within the area. As such any side walk vending regulations adopted and enforced by the local authority must follow specific standards.

The SB 946 imposes time, place and manner of restrictions on side walk street vending and that restrictions are directly related to objective of health, safety and welfare concerns.

Gaps in Existing Frameworks and Model Vending Laws

Studies and research⁷ undertaken on the vending laws identify the following gaps:-

- (a) Prior to the promulgation of the Constitution on 2010, Kenya's legal framework on street vending is domiciled in respective local authorities by laws and currently county laws. Further, that, despite the existence of several by-laws of the then respective local authorities, there are no statutory provisions on street vending with such by-laws related mainly to licensing, health, and planning. The Local Government Act and currently the County Government Act which was and is the country's principal legislation on such matters, lacks express provisions on the subject. The country therefore lacks substantive legislation on street vending. Section 182(1) of the Local Government Act gave every local authority the power to control all public streets which are situated within its area for use and benefit of the public;
- (b) Existing urban planning seem to discourage street vending. The studies reveal that in as much as efficient urban planning provides space for different human activities, urban space for street trade is not a priority. This has resulted in street vendors operating in areas not planned for trading activities, and thereby violating such by-laws;
- (c) Vending laws ought to shift from theory to practice and much as possible take into consideration the institutionalization of societal values as democracy, fairness, compassion, human rights and livelihoods;
- (d) In as much as laws on street vending ought to take into account the interests of the vendors, street vending, like any other trade, needs to be the subject of legal regulation and government revenue sourcing;
- (e) Laws on street vending ought to strike a balance between vendor livelihoods and public interest concerns such as public health, public security, public order, and national development goals.
- (f) In as much as legal framework on street vending ought to follow policies measures to regulate street vending, the former should be drafted with practice in mind for ease of enforcement.

3.0 CONSIDERATION OF THE BILL

⁷ Studies by Nixon Sifuna (Senior Lecturer in Law) (2008) *The Need to Reform Kenya's Law on Street Vending: From Policing to Facilitation*, South African Journal on Human Rights, 24:1, 157-179, DOI: 10.1080/19962126.2008.11864944; Racand, S., Kago, J, and Owuour, S. 'Introduction: Contested Street: Informal Street vending and its contradictions. *Articulo – Journal of Urban Research – Articulo – Reme de Sciences humaines asbl*, 2018. Hal -02327794. 2019.

3.1 Consideration of the bill (Second Reading)

The Street Vendors (Protection and Livelihood) Bill, 2021 was considered for the second reading on the 22nd July 2021 and the 29th July 2021. The following is a highlight of the Senate plenary debate on the bill with specific focus on emerging issues:-

- (a) Expectation that the framework to regulate the business of street vending in the counties will offer the Counties an opportunity to organize its licensing and registration of vending activities. The expected outcomes of this arrangements being sustainable income generating activities and increased revenues for Counties.
- (b) Taking into consideration that at least 80 percent of youth rely on informal economy and retail services, the framework is expected to decriminalise street vending.
- (c) The success of vending activates across the country calls for deliberate planning of cities and towns. This will entail adequate consultation among the various stakeholders.
- (d) Regulation of vending activities should also guarantee the provision of adequate services to the sector including but not limited to sanitation services, security etc.
- (e) The close relationship between vending activities and the twenty four (24) hour economy. Supporting the vending activities is viewed as an opportunity to leverage on such a progressive policy.
- (f) The need for Counties to leverage on information technology in a bid to streamline the vending activities including licensing and registration

3.2 Committee Meetings with Stakeholders

While considering the Bill, the Committee held several sittings including online sessions with the various stakeholders. Prior to the stakeholder's engagement, the Committee called on the public to make submissions on the bill through the local daily newspaper dated 8th May 2021. The Committee invited written submissions from stakeholders on the bill where the following institutions made their representations: The CoG, ICPAK and NGEC. The Committee also received and deliberated on the various memoranda from the institutions and as such formed part of its recommendations and amendments.

STAKEHOLDERS SUBMISSIONS

Clause 2: Interpretation

Provision in the Bill: This Bill has not provided a definition for the "Authorized Officer."

Proposed Amendment: *Provide a definition as follows:* An Authorized Officer is a designated public officer who ensures street vendors comply with the provisions of this Act and shall have identification tags at all times. (ICPAK)

Justification: For clarity as this might create confusion in the enforcement of the provisions of this Act.

Clause 4: Street Vending Unit.

Provision in the Bill: (1) The Cabinet Secretary shall, by notice in the Gazette, designate a section or department within the Ministry responsible for matters relating to street vending as a street vendors unit for purposes of this Act.

(2) The functions of the Unit shall be to —

- (a) maintain, in collaboration with county governments a national registry of street vendors in Kenya;
- (b) prescribe, in consultation with county governments and relevant stakeholders, the minimum standards for the conduct of street vending and regulation of street vendors in Kenya;
- (c) collect and utilize data relating to street vending and street vendors in Kenya for planning and efficient management of street vendors;
- (d) prescribe fees and other charges payable for the registration of street vendors under this Act;
- (e) liaise with all relevant bodies responsible for planning and infrastructure for the proper planning and design of street vending zones;
- (f) advise the Cabinet Secretary on matters relating to street vending in Kenya; and
- (g) carry out any other activity incidental or conducive to the carrying out of its functions under the Act or regulations made under the Act.

Proposed Amendment: Delete the entire provision (COG)

Delete the entire Part II without a replacement and by extension all the terms interpreted in relation to this part and any reference to obligations of the National Government as a regulator. (NGEC)

Justification: Trade is a fully devolved function in accordance with the fourth schedule of the Constitution. Further, the function of trade was unbundled and transferred to the counties vide Kenya Gazette Supplement No. 10 of 1st February 2013, particularly markets. As such, the function belongs to the county. The provisions in the entire Part II seek to give mandate to the National Government to regulate street vending. This is a function of the county governments in Schedule 4, Part 2, line 7 of the Constitution.

Clause 5 on Headquarters of the Unit

Provision in the Bill: (1) The headquarters of the Unit shall be in Nairobi.

(2) The Cabinet Secretary may establish such other offices of the unit anywhere in Kenya as may be necessary for the discharge of the provisions of this Act.

Proposed Amendment: *Amend section 5(2) to read as follows:*

(2) The Cabinet Secretary shall delegate powers to the Committee of the County Assembly to establish such other offices of the unit within the county headquarters under the Ministry of trade as may be necessary for the discharge of the provisions of this Act. (ICPAK)

Delete the provision (COG)

Justification: This is for ease of coordination and efficiency in the discharge of the duties of the unit.

Using already established structures will also help in saving costs likely to be incurred.

Trade is a function of the county governments and as such there is no need to have a Unit at the National Government as it will result in duplication of function.

Clause 6: Director

Provision in the Bill: The Unit shall be headed by the Director responsible for trade within the Ministry.

Proposed Amendment: Delete the provision (COG)

Justification Trade is a function of county governments and as such there is no need to have a unit.

Clause 7: Staff of the Unit

Provision in the Bill: The Cabinet Secretary shall designate such public officers, from within the Ministry as are necessary to serve in the Unit for the proper and efficient discharge of the functions of the Unit under this Act.

Proposed Amendment: Delete the provision (COG)

Justification: Trade is a function of county governments and therefore the Cabinet Secretary does not need to designate Trade is a function of county governments and therefore the Cabinet Secretary does not need to designate any officer.

Clause 8: Designation of vending zones

Provision in the Bill: 1) Each county executive committee member shall, by notice in the county Gazette, demarcate and designate the county into vending zones as follows —

(a) restriction-free vending zones; (b) restricted vending zones; or (c) no-vending zones.

(2) For purposes of subsection (1), the county executive committee member shall take into consideration the commercial viability of an area proposed to be designated as a street vending zone.

(3) A restriction-free vending zone shall be an area in which a validly licenced street vendor may conduct vending activities.

(4) A restricted vending zone shall be a zone in which a validly licensed street vendor may conduct vending activities subject to special permission granted by the county government pursuant to applicable county laws.

(5) A no-vending zones shall be a zone in which vending activities are prohibited.

(6) The county executive committee member shall not designate a market as a no-vending zone.

(7) A person who conducts vending activities in in a restricted vending zone without a special permit or in a no- vending zone commits an offence and is be liable, on conviction, to a term of imprisonment not exceeding six months and a fine not exceeding ten thousand shillings, or to such fine and imprisonment.

Proposed Amendment: a. *Amend by inserting an additional clause as follows;*

“Each county executive committee member shall reserve at least 5% accessible space for persons living with disabilities in the vending zones.”

b. To amend sub clause 7 by substituting the penalty of six months and or a fine of not less than ten thousand shillings with the following;

“**with a fine of one thousand five hundred as a first offender and revocation of the license on the second time.**”(NGEC)

Justification: Universal accessibility guarantees all persons including those with limited mobility to access the location and the amenities including the toilets.

Clause 13: Obligation of the county executive committee member

Provision in the Bill: The county executive committee member shall within twelve months of the commencement of this Act—

(a) enact such county legislation as may be necessary for the implementation of this Act and the effective regulation of street vendors in the county;

(b) monitor the implementation of this Act and any relevant county legislation on county vending;

- (c) periodically survey and assess the street vending activities in the county for policy-making purposes;
- (d) formulate and implement the county vending plan; and
- (e) designate vending zones and periodic markets within the county, subject to the provisions of this Act, the regulations hereunder and any applicable county legislation.

Proposed Amendment: Amend to read:

The Cabinet Secretary in collaboration with county governments shall constitute oversight committees at each county level comprising of traders, people living with disabilities, residents and private sector to perform oversight function over the Street Vending Unit established at the counties.

Amend to read as follows:

- (d) formulate and implement the county vending plan and review after every five years (ICPAK)

Amend by including the proposal below;

The county executive committee member shall periodically in collaboration with the relevant stakeholders formulate regulations to be enacted by the county assemblies on how to designate vending zones and periodic markets (ICPAK)

Justification: This will ensure that all the stakeholders who are affected by these laws are included in the decision making. It will also entrench the values of independence and oversight. The review will ensure the market dynamics and changes in the regulatory requirements are incorporated in the County Vending Plan.

This provides a legislative underpinning to an important process whose outcome affects the public significantly.

Clause 14: Register of street vendors

Provision in the Bill: (1) The county executive committee member shall be responsible for the registration of validly licenced vendors within the respective county.

(2) For purposes of subsection (1) the county executive committee member shall—

- (a) maintain an up to date register of all validly licenced street vendors in the county; and
- (b) submit to the Unit an up to-date list of all street vendors holding a valid licence in the respective county every three months.

(2) The Director shall collate the lists received under subsection (1)(b) into a national register of licenced street vendors;

(3) The Director shall be the Registrar for the purpose of maintenance of the national registry of street vendors.

(4) The Cabinet Secretary may make regulations to govern the day-to-day operations of the national registry.

Proposed Amendment: Delete the provision(COG)

Propose to delete sub clauses (2), (3) and (4) which make reference to the Director and Cabinet Secretary (NGEC)

Justification: In order to ensure the ease of doing business for street vendors, there is no need to have multiple licenses. Once they have the license, they do not need to be registered again by the CEC.

The Director and Cabinet Secretary are officers of the National Government.

The function of the proposed Unit of the National Government stated in clause 4(2) c) i.e. “collect and utilize data relating to street vending and street vendors in Kenya for planning and efficient management of street vendors” is in conflict with the sharing of functions between the two levels of government.

Clause 15: Registration of street vendors.

Provision in the Bill: (1) A person conducting street vending activities in any place in Kenya shall register as a street vendor with the respective county executive committee member.

(2) A certificate of registration signed by the county executive committee member shall be conclusive evidence of registration as a street vendor.

Proposed Amendment: Delete the provision (COG)

Justification: In order to ensure the ease of doing business for street vendors, there is no need to have multiple licenses or registration across counties. Once they have the license, they do not need to be registered again.

Clause 19: Revocation of license.

Provision in the Bill: (1) The county government shall have the power to renew any vending licence and may decline to renew, revoke or suspend a licence for a period not exceeding twelve months if it is satisfied that the street vendor is in breach of any provisions of this Act or any other written law.

(2) Before declining to renew, revoke or suspend a licence under subsection (3), the county government shall notify the holder of the licence to show cause, within fourteen days, why such licence should not be revoked, suspended or denied renewal.

(3) The county government shall consider the application under subsection (4) within seven days and inform the holder of the licence of the county government's decision in writing and shall give reasons for the revocation or suspension.

(4) A street vendor aggrieved by the decision of the county government in the exercise of its powers under subsection (5) may appeal to the relevant county tribunal against the decision within thirty days of receipt of the decision.

Proposed Amendment: Proposal to either establish a Tribunal under this Act or expand the mandate of an already existing tribunal with similar mandate (NGEC)

Justification: All the processes as enumerated are in order save for sub clause (4) which refers to a relevant county Tribunal which is not established or disclosed.

Clause 20: Handling of food.

Provision in the Bill: (1) Any licensed street vendor and all persons working for the street vendor who are involved in handling of food shall —

Proposed Amendment: (ICPAK)

Amend by inserting a new proviso to read as follows; 20(3) County governments shall;

- i) keep the area where the street vendors operate clean by planning proper waste management and disposal policies.
- ii) make sure that no smoke or fumes or liquid escapes from the trading activity and pollutes the surrounding area.
- iii) ensure shop windows and traffic signs are not obscured and no open fire on a public road or public space.
- iv) provide water points for washing hands by those who utilize the street vending services.

Delete the provision (COG)

Justification: This will ensure that the environment will be kept clean at all times to mitigate against the health hazards that arise from street vending.

The provision on providing sanitizers and water points will help in containing the spread of virus. However, this provision should be reviewed once the government declares Kenya safe from Covid-19.

This role is reserved for the Public Health Officers under the Public Health Act. There is no need to provide for the same in a different law.

Clause 22: Right to adequate facilities.

Provision in the Bill: (1) Every street vendor has the right, within vending zones and adjacent areas, as may be determined by the county executive member, to access essential facilities of reasonable quality including but not limited to security, lighting, sanitation services and parking facilities where necessary.

(2) Each county government shall provide essential facilities for the carrying out of vending activities taking into consideration —

- (a) the vending activity being conducted in a specific vending zone;
- (b) applicable health and safety standards; (c) the public interest; and
- (d) any applicable county legislation.

Proposed Amendment: Proposal to amend sub clause (1) by inserting before the word “parking” the following; “accessible infrastructure, build environment.” (NGEC)

Justification: Accessibility of the infrastructure including of the amenities is crucial for both the vendors and the customers who have limited mobility including PWD’s

Clause 23: Right to quiet possession of goods.

Provision in the Bill: (1) Every registered and licensed street vendor has the right to quiet possession of their goods, subject to the provisions of this Act and the terms and conditions of their vending licence.

(2) Where a street vendor's goods or assets utilised for their street vending activities are confiscated under this Act, the officer confiscating the goods shall issue the street vendor with a receipt detailing

- (a) the specific goods confiscated;
- (b) the approximate value of the goods;
- (c) the reasons for confiscation
- (d) the location from which the goods may be recovered;
- (e) the time within which the confiscated goods must be recovered; and
- (f) such other information as may be prescribed by county legislation.

(3) Notwithstanding the provisions of subsection (1), an authorized officer may confiscate goods where—

- (a) one carries out street vending without a licence;
- (b) breaches a condition of a licence issued under this Act or county legislation;
- (c) carries out vending activities in a no-vending zone; or

(d) carries out vending activities in a manner contrary to any conditions imposed for vending in a restricted vending zone.

(4) A person who contravenes the provisions of this section commits an offence and is liable, on conviction, to a term of imprisonment not exceeding one year and a fine not exceeding two hundred thousand shillings, or to such fine and imprisonment.

Proposed Amendment: confiscate goods where” after the word “officer” and substitute with the following, “**may take an inventory of the goods for purposes of taking legal action.**”

Amend 23(4) by substituting the penalties the fine of two hundred thousand with two thousand and the conviction term from one year to one month.

Justification: The penalty proposed in the Bill is not proportional to the breach committed by the vendor. We agree that there has to be order and compliance to the rules set but they must be proportionate and not serve to bring extreme punishment and destruction of the livelihood of the vendor and their family.

Clause 24: Fines and penalties

Provision in the Bill: (1) An officer of the national or respective county government shall not harass a street vendor in the course of conducting their vending activity.

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction, to a term of imprisonment not exceeding one year and a fine not exceeding two hundred thousand shillings, or to such fine and imprisonment.

Proposed Amendment: The Institute proposes a fine one hundred thousand shillings and a term of imprisonment not exceeding six months **ICPAK)**

Justification: This proposal factors in the income levels of those street vendors and what can help them sustain their livelihoods

Clause 29: General penalty.

Provision in the Bill: A person who contravenes the provisions of this Act is liable, on conviction, to a fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding one year or to such fine and imprisonment.

Proposed Amendment

Proposal to delete the entire clause without any replacement and instead identify each breach/offence in the Bill and prescribe a proportionate penalty. **(NGEC)**

Justification: The penalty is too stiff for such a minor breach of license rules.

Clause 30; Regulations.

Provision in the Bill: The Cabinet Secretary may make regulations for the better carrying out of the provisions of this Act.

Proposed Amendment: The Cabinet Secretary may make regulations for the better carrying out of the provisions of this Act.

Justification: This is a county government mandate

3.3 Emerging Thematic and Policy Issues

The following are the key themes arising from the presentations and consequent submissions from the various stakeholders. The issues were considered by the Committee and as such form the basis of the amendments.

(a) The Trade Function Pursuant to the Fourth Schedule

The argument by the stakeholders was that trade is a fully devolved function in accordance with fourth schedule of the Constitution. Further that the trade function, more so the markets

were unbundled and transferred to the Counties vide the Kenya Gazette supplement No. 10 of 1st February 2013. The implication of this is that the National government ought not to have a direct responsibility in performing certain roles as provided in the bill. For instance the role of the Cabinet secretary in the designation of a section/ unit within the Ministry responsible for matters relating to street vending; establishment of the unit headquarters in Nairobi; the creation of director position to head the unit within the Ministry.

The stakeholders were therefore of the view that amendments should address the conflicting functions between the county and national governments is so far as regulation of street vendors is concerned.

(b) Invoking the Specific Application of Rights

In terms of the specific application of rights, the stakeholders opined that the rights of persons with disabilities (PWDs) in line with Article 54 of the Constitution ought to be enforced. Section 54 (1) (b) guarantees PWDs integration in to society to the extent compatible with the interest of the person and a reasonable access to all places. As such, it was argued that the bill ought to take the much required steps to ensure the PWDs have access and have rights to the designated vending zones.

(c) Penalties, Fines and the Confiscation of Vendors Wares

The stakeholders considered the penalties and fines as provided in the bill and concluded that those provisions were punitive. The argument was that penalties and fines should be commensurate to the incomes from street vending. Further that the provision on the right to quest possession of good must take into consideration the acceptability of such measures to the general public. This argument is in with the logic on the persuasive power of the law where the public (in the is case the street vendors) feels that there is some moral obligation to observe the established law, such a law may become unenforceable

4.0 COMMITTEE'S OBSERVATIONS ND RECOMMENDATIONS

4.1 Committee Observations

The following are some of the observations by the Committee:

- (j) The Street Vendors (Protection and Livelihood) Bill, 2021 is timely since if enacted will provide the much needed framework to regulate the business of street vending in the counties. As such this is expected to increase County revenue collection while at the same time provide a sustainable source of livelihood to vendors.
- (k) There is currently no legal framework governing the street vending business per se hence the persisting challenges being experienced by the county government in regulating the trade. Further, India's street vending Act of 2014 which the bill has borrowed heavily from, was preceded by the Street Vendors policy 2004 revised as the National policy on urban street vendors, 2009. This may therefore call for the Executives' efforts to develop a policy framework on this key sub-sector of the SMEs.

- (l) The specific objects of the bill as provided in clause 3 (three) of the bill are in line with Part 1 and Part 2 of Chapter Four (on the Bill of Rights) of the Constitution.
- (m) The bill outlines the respective functions of the National and County government in so far as the regulation of street vending is concerned. For instance the bill empowers the Cabinet Secretary to designate a unit within the Ministry to deal with matters vending. It was however felt that such provisions ought to be harmonized in line with the Fourth Schedule of the Constitution. The argument is that the Schedule devolves trade, development and regulation. Further, that markets were unbundled and transferred to the Counties vide the Kenya Gazette supplement No. 10 of 1st February 2013.
- (n) Taking into consideration that at least 80 percent of youth rely on informal economy and retail services, the framework is expected to decriminalize street vending. The implication of these is that it will offer the youth and opportunity to earn a livelihood while progressively address youth unemployment. Currently, youth unemployment in the county stands at 7.24 percent (2020)⁸.
- (o) The success of vending activities including the development of any supporting regulatory framework calls for deliberate planning and adequate consultation among the various stakeholders.
- (p) The success of street vending activities is dependent on the availability of other supporting infrastructure and facilities like sanitation, security. The bill has attempted to address for this gap by providing of the rights and obligations of the street vendors.
- (q) There is close relationship between street vending activities and the revolutionization of the twenty four (24) hour economy.
- (r) Counties will need to leverage and increase their uptake in information technology in a bid to streamline and guarantee quality services including licensing and registration of street vendors.

4.2 Committee's Recommendations

Following the Committee interactions with the Street Vendors (Protection and Livelihood) Bill 2021 and the subsequent engagement with the relevant stakeholder as highlighted section 3.1 of the report, the Committee harmonized the amendments which will be tabled during the Committee Stage of the Bill. The following are some of the broad areas of amendments among others.

- (g) Interpretation
- (h) Street vending units, the headquarters, director and staff of the unit
- (i) Registration of street vendors
- (j) Designation of vending centres and vending areas for PWDs
- (k) Fines and penalties
- (l) Right to quiet possession of goods

5.0 COMMITTEE AMENDMENTS

⁸ Kenya National Bureau of Statistics *Economic Survey 2020*

MINUTES OF THE NINTH VIRTUAL MEETING OF THE SENATE STANDING COMMITTEE ON TOURISM, TRADE AND INDUSTRIALIZATION HELD ON WEDNESDAY, 15TH JULY, 2020, AT 11:00 AM.

PRESENT

- | | |
|--|--------------------------|
| 1. Sen. (Dr.) Ali Abdullahi Ibrahim, CBS, MP | Chairperson |
| 2. Sen. (Dr.) Gertrude Musuruve Inimah, MP | Vice- Chairperson |
| 3. Sen. (CPA) Farhiya Haji, MP | |
| 4. Sen. (Dr.) Agnes Zani, CBS MP | |
| 5. Sen. Mercy Chebeni, MP | |
| 6. Sen. Mohamed Faki, MP | |
| 7. Sen. Wario Golich Juma, MP | |

ABSENT WITH APOLOGY

1. Sen. (Prof.) Kithure Kindiki, EGH, MP
2. Sen. Philip Mpaayei, MP

SECRETARIAT

- | | |
|-------------------------|--------------------|
| 1. Mr. Peter Mulesi | - Clerk Assistant |
| 2. Ms. Caro Cheruiyot | - Legal Counsel |
| 3. Mr. Said Osman | - Research Officer |
| 4. Ms. Millicent Ratemo | - Audio Officer |

MIN. SEN/SCTTI/029/2020:

PRELIMINARIES

The Chairperson called the meeting to order at 11.04 am and there followed a word of prayer by Sen. (Dr.) Agnes Zani, MP.

He explained that the purpose of the meeting was for the secretariat to make presentation of Pending Bills before the Committee as a way of enhancing the capacity of the Members.

MIN. SEN/SCTTI/030/2020:

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen (Dr.) Agnes Zani, MP, and seconded by Sen. (Dr.) Gertrude Musuruve , MP as follows-

1. Preliminaries
2. Adoption of the Agenda
3. Briefing on –
 - i. The Street Vendors (Protection of Livelihood) (Senate Bills No.10 of 2019
 - ii. The SACCO Societies (Amendment) Bill (National Assembly) Bills No.1 of 2018
4. Any other Business

5. Adjournment and date of the next meeting

MIN. SEN/SCTTI//031/2020: BRIEFING ON THE STATUS OF BILLS BEFORE THE COMMITTEE

The Chairperson invited the secretariat to make summary presentations on the Committee Bills. He acknowledged that Members had already interacted with the Bills Digest as posted on the Committee platform and it was their expectation that that the presentation only addresses key aspects including the objects and the status.

- a) The Street Vendors (Protection of Livelihood) (Senate Bills No.10 of 2019

Ms. Caro Cheruiyot, Legal Counsel informed the Committee as follows-

Purpose of the Bill

The principal object of this Bill is to provide a framework to regulate the business of street vending in the country. Small scale trade contributes significantly to the growth of trade in the country. Currently, there is no legal framework governing the business of street vending thus the challenges being experience by the both the street vendors and the county governments in the undertaking of the business.

Salient provisions of the Bill

- (a) the Bill proposes the designation of a Street Vendors Unit in the Ministry responsible for trade. The Unit will carry out various functions including maintaining, in a national registry of street vendors in Kenya, prescribing minimum standards for the conduct of street vending, collecting and utilizing data relating to street vending and street vendors and liaising with all relevant bodies responsible for planning and infrastructure for the proper planning and design of street vending zones;
- (b) the Bill also provides that the county executive committee member shall designate vending zones for the purpose of carrying out vending activities. These zones shall be divided into three categories restriction-free vending zones; restricted vending zones; or no-vending zones. The county executive committee member shall also be responsible for the development of a county vending zone plan and shall, within twelve months of the commencement of this Act, conduct a survey of all existing street vendors and potential vending zones within the respective area. The plan shall be submitted to the county assembly for approval;

- (c) the Bill also requires each county government to progressively provide for the construction and maintenance of vending centres to enable the carrying out of street vending activities in a fair, transparent and safe manner. In this respect, the county vending plan shall set out the location and optimal structure of vending centres to accommodate street vendors and relevant State agencies shall, in the enactment of any physical planning legislation at county or national level, prioritize adequate provision for vending zones and vending centres as proposed or identified in a county vending plan;
- (d) the Bill designates the county executive committee member responsible for trade as the authority responsible for the registration of validly licensed vendors within the respective county. In this respect, the county executive member shall be expected to maintain an up to date register of all validly licensed street vendors in the county; and submit to the Vendors Unit an up to-date list of all street vendors holding a valid licence in the respective county every three months;
- (e) the Bill also provides that a person who intends to carry out street vending activities shall apply to the county government be registered as a street vendor upon payment of a prescribed fee. A license issued for street vending may be one of three types: a stationary vendor; a mobile vendor; or any other category as may be specified by the county executive committee member. Upon an application being made for the issuance of a license for street vending activities, the county government may allow the application and issue a license or reject the application. The county government also has power to revoke a license or suspend its application;
- (f) one of the most central proposals of the Bill is the protection of the rights of street vendors as they carry out their activities. The Bill therefore creates certain rights in favour of street vendors and these rights include-
 - (i) **Right to adequate facilities:** every street vendor has the right, within vending zones and adjacent areas, to access essential facilities of reasonable quality including but not limited to security, lighting, sanitation services and parking facilities where necessary;
 - (ii) **Right to quiet possession of goods:** Every registered and licensed street vendor has the right to quiet possession of their goods. Where a street vendor's goods or assets utilized for their street vending activities are confiscated, the officer confiscating the goods shall issue the street vendor with a receipt detailing the specific goods confiscated; the location from which the goods may be recovered; the time within which the confiscated goods must be recovered; and such other information as may be prescribed by county legislation;

(iii) **Protection from harassment:** the Bill prohibits the harassment of a street vendor in the course of conducting their vending activity by any office of the national or respective county government;

(g) The Bill also proposes to place certain obligations on street vendors including a duty to maintain a clean and hygienic environment within designated vending zones and a duty to ensure reasonable access to the areas they occupy and not to unnecessarily impede the carrying out of daily activities by other members of the public.

Consequences of the Bill

The Bill seeks to regulate street vending activities through providing for an organised system of licensing and registration. This will ensure that informal trade within county governments is carried out in a manner that is safe, sustainable and enhances the ability of ordinary Kenyans to take part in income generating activities. Consequently, this will enhance not only the socio-economic status of informal traders and their dependents but will also enhance revenue collected by county governments from the informal trade sector. Enhance revenue in the counties will ensure the delivery of efficient services by county governments as they carry out their functions as set out under Part 2 of the Fourth Schedule to the Constitution.

Recommendations by the Committee

From the ensuing deliberations on the Street Vendors (Protection of Livelihood) Bill, Senate Bills No. 10 of 2019, the following Committee Stage Amendments were adopted-

CLAUSE 2

THAT clause 2 of the Bill be amended-

- (a) by deleting the definition of the words “informal trader”;
- (b) by deleting the definition of the word “market”;
- (c) by inserting the following new definitions in the correct alphabetical sequence-

“market” means an area designated by the county government under the respective county legislation for the sale and purchase of goods and services;

“street vendor” means a person engaged in vending of articles, goods, wares, food items or merchandise of everyday use or offering services to the general public in a street, lane, sidewalk, footpath, pavement, public park or any other public place or private area, from a temporary built-up structure, and includes a hawker, peddler and all synonymous terms of the word;

CLAUSE 4

THAT clause 4 of the Bill be amended in sub-clause (2) paragraph (e) by deleting the words “within major infrastructure areas in the country” appearing immediately after the words “street vending zones”.

CLAUSE 8

THAT clause 8 of the Bill be amended-

(a) by inserting the following new subclause immediately after subclause (1)-

(1A) For purposes of subsection (1), the county executive committee member shall take into consideration the commercial viability of an area proposed to be designated as a street vending zone.

(b) in subclause (6) by inserting the words “and is be liable, on conviction, to a term of imprisonment not exceeding six months and a fine not exceeding ten thousand shillings, or to such fine and imprisonment” immediately after the words “commits an offence”.

CLAUSE 22

THAT clause 22 of the Bill be amended in subclause (1) by inserting the word “as may be determined by the county executive member” immediately after the words “adjacent areas”.

CLAUSE 23

THAT clause 23 of the Bill be amended-

(a) in subclause (2) by inserting the following new paragraph immediately after paragraph

(a)-

(aa) the approximate value of the goods;

(ab) the reasons for confiscation

(b) by inserting the following new subclauses immediately after subclause (2)-

(2a) Notwithstanding the provisions of subsection (1), an authorized officer may confiscate goods where-

(i) one carries out street vending without a licence;

(ii) breaches a condition of a licence issued under this Act or county legislation;

(iii) carries out vending activities in a no-vending zone; or

(iv) carries out vending activities in a manner contrary to any conditions imposed for vending in a restricted vending zone.

(2b) A person who contravenes the provisions of this section commits an offence and is liable, on conviction, to a term of imprisonment not exceeding one year and a fine not exceeding two hundred thousand shillings, or to such fine and imprisonment.

CLAUSE 24

THAT clause 24 of the Bill be deleted and substituted therefor with the following new clause-

Protection from harassment **24.** (1) An officer of the national or respective county government shall not harass a street vendor in the course of conducting their vending activity.

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction, to a term of imprisonment not exceeding one year and a fine not exceeding two hundred thousand shillings, or to such fine and imprisonment.

CLAUSE 28

THAT clause 28 of the Bill be amended in subsection (2) by deleting paragraph (c).

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 28-

General penalty. **28A.** A person who contravenes the provisions of this Act is liable, on conviction, to a fine not exceeding one hundred thousand shillings or to a term of

imprisonment not exceeding one year or to such fine and imprisonment.

b) The SACCO Societies (Amendment) Bill (National Assembly) Bills No.1 of 2018

Ms. Caro Cheruiyot, Legal Counsel informed the Committee as follows-

Purpose of the Bill

The Committee was informed as follows; That

The principal objective of this Bill is to amend the SACCO Societies Act of 2008 by inserting new sections to provide for the use of the phrase “DT” SACCO, the registration and licensing of a Deposit Taking Sacco Society and for the determination of suitability of officers;

The SACCO Societies Act of 2008 does not provide for the use of the phrase “DT”SACCO nor the registration or licensing of the same. Since there has been a great rise of Deposit Taking Sacco’s in the industry, there is the need to provide for the use of the phrase “DT”SACCO and the registration or licencing of the same.

Salient provisions of the Bill

- (a) at the outset, the Bill proposes to insert a new section immediately after section 27 as section 27A to provide for the use of the Phrase “DT” SACCO where a Sacco Society licensed under the Act to undertake deposit-taking business will incorporate, as part of its business name and use at all times, the phrase “DT-SACCO” or any of its derivatives. ;
- (b) the Bill prohibits any person from using the word “DT-SACCO” or any of its derivatives or any words indicating the transaction word of a deposit-taking Sacco business or its equivalent, in the name, description or title under which that person transacts business in Kenya or make any representation that the person transacts deposit-taking Sacco business unless that person is licensed under the Act. ;
- (c) the Bill further provides for the time line within which every deposit-taking Sacco society that existed before the commencement of this section should take to comply with the provisions of sub section 1 of the new section 27 A, to be twelve months.;

- (d) the Bill provides that every deposit-taking Sacco society licensed under the Act will have an obligation to notify the Authority prior to the amending of its registered by-laws or any provisions thereof.;
- (e) the Bill requires every co-operative society that has been registered or incorporated as a deposit-taking savings and credit co-operative society or Sacco society to, within one year of registration, obtain a licence from the Authority to operate as a deposit-taking savings and credit co-operative society or a Sacco society.;
- (f) the Bill requires of any co-operative society that has failed to obtain a licence within one year of registration in accordance with section 27B (1) to stop using the word “DT-SACCO” or any of its derivatives in its name and a person who continues to use the word “DT-SACCO” or any of its derivatives in contravention of section 27B (2), commits an offence.;
- (g) the Bill at new section 48 A provides that the Authority will have the responsibility of determining the suitability and propriety of every person seeking to serve as a Board member, Chief Executive Officer or other officer of a Sacco society, and may bar a person from serving in a Sacco society as a Board member, Chief Executive Officer or an officer pursuant to its determination. Further, in making its determination, the Authority will consider the financial status or solvency of the person; the academic or other qualifications or experience of the person, having regard to the nature of the functions which the person shall perform; and the status of any other licence or approval granted to the person by any financial sector regulator. The Authority will also consider the ability of the person to carry on the regulated activity competently, honestly and fairly; the reputation, character, financial integrity and reliability of the person; or any other material information that the Authority may consider necessary.
- (h) the Bill provides that when determining whether a person is suitable and proper, the Authority may take into account whether that person has contravened provisions of any law for the protection of members of the public against financial loss due to dishonesty, incompetence or malpractice by persons engaged in dealing in marketable securities; has been convicted or is being investigated in respect of an offence involving financial impropriety, fraud, corruption or economic crimes; and whether the person was a director of a Sacco society which was involuntarily liquidated, is under involuntary liquidation or has been placed under statutory management. The Authority will also consider whether the person has participated in any business practice which, in the opinion of the Authority, was fraudulent, prejudicial to the market or public interest, was otherwise improper or would otherwise discredit the person’s methods of

conducting Sacco society business; whether they have participated in or have been associated with any business practice, or acted in such a manner which casts doubt on the person's competence or soundness of judgment.

- (i) the Bill requires that before the Authority determines that a person is not suitable or proper to serve as a director or officer of a Sacco society, the Authority gives that person an opportunity to be heard.;
- (j) the Bill provides for the amendment of section 50 of the Principal Act by deleting subsection 8 and substituting therefor a new subsection 8 where the Authority may impose minimum standards on significant members and officers of a Sacco society as prescribed, including a mandatory continuous or minimum professional development course, training and certification which every Board member, Chief Executive Officer or an officer of a Sacco Society will undertake or attain before serving or seeking to serve as a Board member, Chief Executive Officer or an officer of a Sacco Society.;
- (k) the Bill provides for the amendment of section 54 of the Principal Act in subsection (5) by deleting paragraph (b) and substituting therefor a new paragraph (b) which provides that a Sacco society will, in the ordinary course of business exchange information on performing and non-performing loans as may be specified by the Authority and to such extent as may be prescribed through regulations made under the Act.;
- (l) the Bill provides for the amendment of section 54 of the Principal Act in subsection(6), by inserting a new paragraph (c) immediately after paragraph (b) to include an institution licensed under the Banking Act, Microfinance Act or any other entity as may be provided for under any other written law.;
- (m) the Bill provides for the amendment of section 54 of the Principal Act by inserting a new subsection (7) immediately after subsection (6) which provides that for the purposes of the section, "credit reference bureau" means a credit reference bureau established and operated pursuant to the provisions of section 31 of the Banking Act or section 34 of the Microfinance Act, 2006.

Consequences of the Bill

The Bill seeks to amend the SACCO Societies Act of 2008 by inserting new sections to provide for the use of the phrase "DT" SACCO, the registration and licensing of a Deposit Taking Sacco Society and for the determination of suitability of officers.

The Bill will compliment the SACCO Societies Act of 2008 which does not provide for the use of the phrase "DT" SACCO nor the registration or licensing of Deposit Taking Sacco's.

Reactions by the Committee

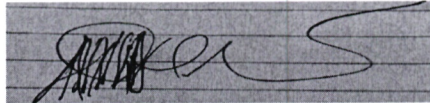
From the ensuing deliberations, the Committee agreed on the Amendment Bill and further resolved that the Committee invites further submissions for memoranda on the Bill from targeted stakeholders and from institutions of interest as follows-

- 1) The Ministry of Tourism, Livestock, Fisheries and Cooperatives
- 2) The Sacco Society Regulatory Authority (SASRA);
- 3) The Commissioner for Cooperatives;
- 4) the Institute of Certified Public Accountants (ICPAC); and
- 5) the Kenya Union of Saccos and Credit Societies (KUSCO)

MIN. SEN/SCTTI//029/2020: ANY OTHER BUSINESS AND
ADJOURNMENT

There being no other business, the meeting adjourned at 12.31 pm;

SIGNATURE:



(CHAIRPERSON: SEN. (DR.) ABDULLAHI IBRAHIM ALI, CBS, MP)
Thursday, 16th July, 2020

MINUTES OF THE 94th SITTING OF THE SENATE STANDING COMMITTEE ON TOURISM, TRADE AND INDUSTRIALIZATION HELD ON WEDNESDAY, 14TH JULY, 2021, AT 11:00 AM VIA ZOOM.

PRESENT

- | | |
|--|--------------------------|
| 1. Sen. (Dr.) Ali Abdullahi Ibrahim, CBS, MP | Chairperson |
| 2. Sen. (Dr.) Gertrude Musuruve Inimah, MP | Vice- Chairperson |
| 3. Sen. CPA. Farhiya Haji, MP | |
| 4. Sen. Mercy Chebeni, MP | |
| 5. Sen. Mohamed Faki, MP | |

ABSENT WITH APOLOGY

1. Sen. (Prof.) Kithure Kindiki, EGH, MP
2. Sen. (Dr.) Agnes Zani, CBS MP,
3. Sen. Philip Mpaayei, MP
4. Sen. Wario Golich Juma, MP

SECRETARIAT

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|------------------------|---------------------------|
| 1. Mr. Peter Mulesi | - Clerk Assistant |
| 2. Ms. Lucy Radoli | - Legal Counsel |
| 3. Ms. Marale Sande | - Research Officer |
| 4. Mr. Njeri Manga | - Media Relations Officer |
| 5. Ms. Milicent Ratemo | - Audio Officer |

MIN. NO. 308/2021:

PRELIMINARIES

The Chairperson called the meeting to order at 11.17 am and there followed a word of prayer.

MIN. NO. 309/2021:

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen by Sen. (Dr.) Gertrude Musuruve MP, and seconded by Sen. Mohamed Faki , MP as follows-

1. Preliminaries
 - i. *Prayer*
2. Adoption of Agenda
3. Confirmation of Minutes of the 93rd Sitting held on Thursday 8th July, 2021
4. Consideration of stakeholder submission on the Street Vendors (Protection of Livelihood) Bill, Senate Bills No. 7 of 2021
5. Any other Business
6. Adjournment and Date of Next Meeting

MIN. NO. 310/2021: **CONFIRMATION OF MINUTES OF THE 93RD SITTING HELD ON THURSDAY 8TH JULY, 2021**

Minutes of the 93rd Sitting held on Thursday 8th July, 2021 at 11.00am on the zoom online platform were deferred to the following meeting as there was no Seconder from those that were present.

MIN. NO. 311/2021: **STREET VENDORS (PROTECTION OF LIVELIHOOD) BILL, SENATE BILLS NO. 7 OF 2021**

The Chairperson invited the secretariat to take the Committee through the matric from public participation. Ms. Lucy Radoli, Legal Counsel informed the Committee that following the call for submission of memoranda on the republished Bill, the following submissions were received-

STAKEHOLDERS SUBMISSIONS

Clause 2: Interpretation

Provision in the Bill: This Bill has not provided a definition for the “Authorized Officer.”

Proposed Amendment: *Provide a definition as follows:* An Authorized Officer is a designated public officer who ensures street vendors comply with the provisions of this Act and shall have identification tags at all times. **(ICPAK)**

Justification: For clarity as this might create confusion in the enforcement of the provisions of this Act.

Clause 4: Street Vending Unit.

Provision in the Bill: (1) The Cabinet Secretary shall, by notice in the Gazette, designate a section or department within the Ministry responsible for matters relating to street vending as a street vendors unit for purposes of this Act.

(2) The functions of the Unit shall be to —

- (a) maintain, in collaboration with county governments a national registry of street vendors in Kenya;
- (b) prescribe, in consultation with county governments and relevant stakeholders, the minimum standards for the conduct of street vending and regulation of street vendors in Kenya;
- (c) collect and utilize data relating to street vending and street vendors in Kenya for planning and efficient management of street vendors;
- (d) prescribe fees and other charges payable for the registration of street vendors under this Act;
- (e) liaise with all relevant bodies responsible for planning and infrastructure for the proper planning and design of street vending zones;
- (f) advise the Cabinet Secretary on matters relating to street vending in Kenya; and
- (g) carry out any other activity incidental or conducive to the carrying out of its functions under the Act or regulations made under the Act.

Proposed Amendment: Delete the entire provision **(COG)**

Delete the entire Part II without a replacement and by extension all the terms interpreted in relation to this part and any reference to obligations of the National Government as a regulator.

(NGEC)

Justification: Trade is a fully devolved function in accordance with the fourth schedule of the Constitution. Further, the function of trade was unbundled and transferred to the counties vide Kenya Gazette Supplement No. 10 of 1st February 2013, particularly markets. As such, the function belongs to the county. The provisions in the entire Part II seek to give mandate to the National Government to regulate street vending. This is a function of the county governments in Schedule 4, Part 2, line 7 of the Constitution.

Clause 5 on Headquarters of the Unit

Provision in the Bill: (1) The headquarters of the Unit shall be in Nairobi.

(2) The Cabinet Secretary may establish such other offices of the unit anywhere in Kenya as may be necessary for the discharge of the provisions of this Act.

Proposed Amendment: *Amend section 5(2) to read as follows:*

(2) The Cabinet Secretary shall delegate powers to the Committee of the County Assembly to establish such other offices of the unit within the county headquarters under the Ministry of trade as may be necessary for the discharge of the provisions of this Act. (ICPAK)

Delete the provision (COG)

Justification: This is for ease of coordination and efficiency in the discharge of the duties of the unit. Using already established structures will also help in saving costs likely to be incurred.

Trade is a function of the county governments and as such there is no need to have a Unit at the National Government as it will result in duplication of function.

Clause 6: Director

Provision in the Bill: The Unit shall be headed by the Director responsible for trade within the Ministry.

Proposed Amendment: Delete the provision (COG)

Justification Trade is a function of county governments and as such there is no need to have a unit.

Clause 7: Staff of the Unit

Provision in the Bill: The Cabinet Secretary shall designate such public officers, from within the Ministry as are necessary to serve in the Unit for the proper and efficient discharge of the functions of the Unit under this Act.

Proposed Amendment: Delete the provision (COG)

Justification: Trade is a function of county governments and therefore the Cabinet Secretary does not need to designate Trade is a function of county governments and therefore the Cabinet Secretary does not need to designate any officer.

Clause 8: Designation of vending zones

Provision in the Bill: 1) Each county executive committee member shall, by notice in the county Gazette, demarcate and designate the county into vending zones as follows —

(a) restriction-free vending zones; (b) restricted vending zones; or (c) no-vending zones.

(2) For purposes of subsection (1), the county executive committee member shall take into consideration the commercial viability of an area proposed to be designated as a street vending zone.

- (3) A restriction-free vending zone shall be an area in which a validly licenced street vendor may conduct vending activities.
- (4) A restricted vending zone shall be a zone in which a validly licensed street vendor may conduct vending activities subject to special permission granted by the county government pursuant to applicable county laws.
- (5) A no-vending zones shall be a zone in which vending activities are prohibited.
- (6) The county executive committee member shall not designate a market as a no-vending zone.
- (7) A person who conducts vending activities in in a restricted vending zone without a special permit or in a no- vending zone commits an offence and is be liable, on conviction, to a term of imprisonment not exceeding six months and a fine not exceeding ten thousand shillings, or to such fine and imprisonment.

Proposed Amendment: a. *Amend by inserting an additional clause as follows;*

“Each county executive committee member shall reserve at least 5% accessible space for persons living with disabilities in the vending zones.”

b. To amend sub clause 7 by substituting the penalty of six months and or a fine of not less than ten thousand shillings with the following;

“**with a fine of one thousand five hundred as a first offender and revocation of the license on the second time.**”(NGEC)

Justification: Universal accessibility guarantees all persons including those with limited mobility to access the location and the amenities including the toilets.

Clause 13: Obligation of the county executive committee member

Provision in the Bill: The county executive committee member shall within twelve months of the commencement of this Act—

- (a) enact such county legislation as may be necessary for the implementation of this Act and the effective regulation of street vendors in the county;
- (b) monitor the implementation of this Act and any relevant county legislation on county vending;

(c) periodically survey and assess the street vending activities in the county for policy-making purposes;

(d) formulate and implement the county vending plan; and

(e) designate vending zones and periodic markets within the county, subject to the provisions of this Act, the regulations hereunder and any applicable county legislation.

Proposed Amendment: *Amend to read:*

The Cabinet Secretary in collaboration with county governments shall constitute oversight committees at each county level comprising of traders, people living with disabilities, residents and private sector to perform oversight function over the Street Vending Unit established at the counties.

Amend to read as follows:

(d) formulate and implement the county vending plan and review after every five years (**ICPAK**)

Amend by including the proposal below;

The county executive committee member shall periodically in collaboration with the relevant stakeholders formulate regulations to be enacted by the county assemblies on how to designate vending zones and periodic markets (**ICPAK**)

Justification: This will ensure that all the stakeholders who are affected by these laws are included in the decision making. It will also entrench the values of independence and oversight.

The review will ensure the market dynamics and changes in the regulatory requirements are incorporated in the County Vending Plan.

This provides a legislative underpinning to an important process whose outcome affects the public significantly.

Clause 14: Register of street vendors

Provision in the Bill: (1) The county executive committee member shall be responsible for the registration of validly licenced vendors within the respective county.

(2) For purposes of subsection (1) the county executive committee member shall—

(a) maintain an up to date register of all validly licenced street vendors in the county; and

(b) submit to the Unit an up to-date list of all street vendors holding a valid licence in the respective county every three months.

(2) The Director shall collate the lists received under subsection (1)(b) into a national register of licenced street vendors;

(3) The Director shall be the Registrar for the purpose of maintenance of the national registry of street vendors.

(4) The Cabinet Secretary may make regulations to govern the day-to-day operations of the national registry.

Proposed Amendment: Delete the provision(**COG**)

Propose to delete sub clauses (2), (3) and (4) which make reference to the Director and Cabinet Secretary (**NGEC**)

Justification: In order to ensure the ease of doing business for street vendors, there is no need to have multiple licenses. Once they have the license, they do not need to be registered again by the CEC.

The Director and Cabinet Secretary are officers of the National Government.

The function of the proposed Unit of the National Government stated in clause 4(2) c) i.e. “collect and utilize data relating to street vending and street vendors in Kenya for planning and efficient management of street vendors” is in conflict with the sharing of functions between the two levels of government.

Clause 15: Registration of street vendors.

Provision in the Bill: (1) A person conducting street vending activities in any place in Kenya shall register as a street vendor with the respective county executive committee member.

(2) A certificate of registration signed by the county executive committee member shall be conclusive evidence of registration as a street vendor.

Proposed Amendment: Delete the provision (COG)

Justification: In order to ensure the ease of doing business for street vendors, there is no need to have multiple licenses or registration across counties. Once they have the license, they do not need to be registered again.

Clause 19: Revocation of license.

Provision in the Bill: (1) The county government shall have the power to renew any vending licence and may decline to renew, revoke or suspend a licence for a period not exceeding twelve months if it is satisfied that the street vendor is in breach of any provisions of this Act or any other written law.

(2) Before declining to renew, revoke or suspend a licence under subsection (3), the county government shall notify the holder of the licence to show cause, within fourteen days, why such licence should not be revoked, suspended or denied renewal.

(3) The county government shall consider the application under subsection (4) within seven days and inform the holder of the licence of the county government's decision in writing and shall give reasons for the revocation or suspension.

(4) A street vendor aggrieved by the decision of the county government in the exercise of its powers under subsection (5) may appeal to the relevant county tribunal against the decision within thirty days of receipt of the decision.

Proposed Amendment: Proposal to either establish a Tribunal under this Act or expand the mandate of an already existing tribunal with similar mandate (NGEC)

Justification: All the processes as enumerated are in order save for sub clause (4) which refers to a relevant county Tribunal which is not established or disclosed.

Clause 20: Handling of food.

Provision in the Bill: (1) Any licensed street vendor and all persons working for the street vendor who are involved in handling of food shall —

Proposed Amendment: (ICPAK)

Amend by inserting a new proviso to read as follows; 20(3) County governments shall;

- i) keep the area where the street vendors operate clean by planning proper waste management and disposal policies.
- ii) make sure that no smoke or fumes or liquid escapes from the trading activity and pollutes the surrounding area.

- iii) ensure shop windows and traffic signs are not obscured and no open fire on a public road or public space.
- iv) provide water points for washing hands by those who utilize the street vending services.

Delete the provision (COG)

Justification: This will ensure that the environment will be kept clean at all times to mitigate against the health hazards that arise from street vending.

The provision on providing sanitizers and water points will help in containing the spread of virus. However, this provision should be reviewed once the government declares Kenya safe from Covid-19.

This role is reserved for the Public Health Officers under the Public Health Act. There is no need to provide for the same in a different law.

Clause 22: Right to adequate facilities.

Provision in the Bill: (1) Every street vendor has the right, within vending zones and adjacent areas, as may be determined by the county executive member, to access essential facilities of reasonable quality including but not limited to security, lighting, sanitation services and parking facilities where necessary.

(2) Each county government shall provide essential facilities for the carrying out of vending activities taking into consideration

- (a) the vending activity being conducted in a specific vending zone;
- (b) applicable health and safety standards; (c) the public interest; and
- (d) any applicable county legislation.

Proposed Amendment: Proposal to amend sub clause (1) by inserting before the word “parking” the following; “accessible infrastructure, build environment.” (NGEC)

Justification: Accessibility of the infrastructure including of the amenities is crucial for both the vendors and the customers who have limited mobility including PWD’s

Clause 23: Right to quiet possession of goods.

Provision in the Bill: (1) Every registered and licensed street vendor has the right to quiet possession of their goods, subject to the provisions of this Act and the terms and conditions of their vending licence.

(2) Where a street vendor's goods or assets utilised for their street vending activities are confiscated under this Act, the officer confiscating the goods shall issue the street vendor with a receipt detailing

(a) the specific goods confiscated;

(b) the approximate value of the goods;

(c) the reasons for confiscation

(d) the location from which the goods may be recovered;

(e) the time within which the confiscated goods must be recovered; and

(f) such other information as may be prescribed by county legislation.

(3) Notwithstanding the provisions of subsection (1), an authorized officer may confiscate goods where—

(a) one carries out street vending without a licence;

(b) breaches a condition of a licence issued under this Act or county legislation;

(c) carries out vending activities in a no-vending zone; or

(d) carries out vending activities in a manner contrary to any conditions imposed for vending in a restricted vending zone.

(4) A person who contravenes the provisions of this section commits an offence and is liable, on conviction, to a term of imprisonment not exceeding one year and a fine not exceeding two hundred thousand shillings, or to such fine and imprisonment.

Proposed Amendment: confiscate goods where” after the word “officer” and substitute with the following, “**may take an inventory of the goods for purposes of taking legal action.**”

Amend 23(4) by substituting the penalties the fine of two hundred thousand with two thousand and the conviction term from one year to one month.

Justification: The penalty proposed in the Bill is not proportional to the breach committed by the vendor. We agree that there has to be order and compliance to the rules set but they must be proportionate and not serve to bring extreme punishment and destruction of the livelihood of the vendor and their family.

Clause 24: Fines and penalties

Provision in the Bill: (1) An officer of the national or respective county government shall not harass a street vendor in the course of conducting their vending activity.

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction, to a term of imprisonment not exceeding one year and a fine not exceeding two hundred thousand shillings, or to such fine and imprisonment.

Proposed Amendment: The Institute proposes a fine one hundred thousand shillings and a term of imprisonment not exceeding six months (ICPAK)

Justification: This proposal factors in the income levels of those street vendors and what can help them sustain their livelihoods

Clause 29: General penalty.

Provision in the Bill: A person who contravenes the provisions of this Act is liable, on conviction, to a fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding one year or to such fine and imprisonment.

Proposed Amendment

Proposal to delete the entire clause without any replacement and instead identify each breach/offence in the Bill and prescribe a proportionate penalty. (NGEC)

Justification: The penalty is too stiff for such a minor breach of license rules.

Clause 30; Regulations.

Provision in the Bill: The Cabinet Secretary may make regulations for the better carrying out of the provisions of this Act.

Proposed Amendment: The Cabinet Secretary may make regulations for the better carrying out of the provisions of this Act.

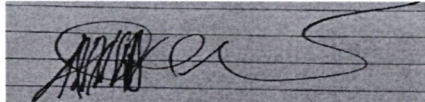
Justification: This is a county government mandate

Resolution of the Committee

It was resolved that the legal Counsel consolidates all the amendments for the Committee Stage.

MIN. NO. 312/2021: ADJOURNMENT AND THE DATE OF THE NEXT MEETING

There being no other business, the meeting adjourned at 12.46 pm and the next meeting was scheduled for **Wednesday, 21st July, 2021** at 11.00 am via zoom.



SIGNATURE:

CHAIRPERSON: SEN. (DR.) ABDULLAHI IBRAHIM ALI, CBS, MP)

Dated: 21st July, 2021

**MINUTES OF THE 124TH SITTING OF THE STANDING COMMITTEE ON
TOURISM, TRADE AND INDUSTRIALIZATION HELD ON THURSDAY, 3RD
MARCH, 2022 AT 11. 00 A.M VIA ZOOM**

PRESENT

- 1) Sen. (Dr.) Ibrahim Abdulahi Ali, CBS-**Chairperson**
- 2) Sen. (Dr.) Gedrude Musuruve, MP- **Vice- Chairperson**
- 3) Sen. (CPA) Farhiya Haji, MP
- 4) Sen. Mohamed Faki, MP
- 5) Sen. Philip Mpaayei, MP

ABSENT WITH APOLOGY

- 1) Sen. Wario Golich, MP
- 2) Sen. Mercy Chebeni,MP
- 3) Sen. (Prof.) Kithure Kindiki, EGH, MP
- 4) Sen. Agnes Zani, MP

SECRETARIAT

- 1) Mr. Peter Mulesi - Clerk Assistant
- 2) Mr. Crispus Njogu- Clerk Assistant
- 3) Ms. Lucy Radoli - Legal Counsel
- 4) Mr. Stephen Maru- Snr. Sergeant-At-Arms
- 5) Milicent Ratemo - Audio Officer

MIN. NO. 462/2022 : PRELIMINARIES

The Chairperson called the meeting to order at 11.08 am and there followed a word of Prayer.

MIN. NO. 463/2022 : ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after having been proposed by Sen. (Dr.) Gedrude Musuruve, MP and seconded by Sen. Mohamed Faki, MP as follows-

1. Preliminaries
 - i. *Prayer*
2. Adoption of Agenda
3. Adoption of the Report on the Street Vendors (Promotion of Livelihood) Bill (Senate Bills No. 7 of 2021)
4. Updates on Statements Committed to the Committee
5. Updates on the Committee Participation in the 7th Sacco Leaders Convention held in Mombasa County.
6. Any other Business

**MIN. NO. 464/2021: UPDATES ON STATEMENTS COMMITTED TO THE
COMMITTEE**

The Committee was informed that during the Plenary of the Senate held on Wednesday, 1st March, 202 at 2.30 p.m., Sen. Samson Cherarkey, MP, requested for a

Statement from the Standing Committee on Tourism, Trade and Industrialization on the failure to utilize the Tourism Promotion Fund (TPF) to Market Kenya in Sports Tourism.

In the statement, the Committee was requested to provide the following information-

- 1) State why the Ministry has failed to utilize the Tourism Promotion Fund to leverage on the Kenya's conquering athletes to promote global Tourism as elite brand ambassadors;
- 2) Enumerate the various activities the Tourism Promotion Fund (TPF) has exploited to project Kenya as an ideal destination for sports tourism like Rwanda that has managed to get mega deals with European soccer giants (Arsenal and PSG)
- 3) Indicate the projects that the Tourism Promotion Fund (TPF) has implemented and how much resources were utilized;
- 4) State why there has been duplication of roles between the agencies in the Ministry of Tourism and Wildlife that is, Tourism Promotion Fund, Tourism Fund, Brand Kenya and Kenya Tourism Board; and
- 5) Provide a breakdown of the allocation of funds to all the counties and indicate the activities that have been undertaken

The Committee interrogated the statement and thanked Sen. Samson Cherarkey, MP, for the timely statement and further raised concerns on whether the Tourism Promotion Fund (TPF) as currently constituted resided in the Ministry of Tourism and Wildlife or at the National Treasury.

The Secretariat was requested to fast-track correspondence to the concerned respondents in order to enable the Committee to consider the statement within a shorter time frame noting that the electioneering period was imminent.

MIN. NO. 465/2021: CONSIDERATION AND ADOPTION OF THE REPORT ON THE STREET VENDORS (PROTECTION OF LIVELIHOOD) BILL (SENATE BILLS NO. 7 OF 2021)

The Chairperson invited the Secretariat to briefly take the Committee through the draft report on the Street Vendors (Protection of Livelihood) Bill (Senate Bills No. 7 of 2021). He explained that the Committee had elaborately considered the Bill and further engaged with a broad spectrum of stakeholders.

Ms. Lucy Radoli, Legal Counsel, provided highlights on the following amendments that had been agreed upon by the Committee-

CLAUSE 8

THAT clause 8 of the Bill be amended-

- (a) by inserting the following new sub-clause immediately after sub-clause 2-

(2A) The county executive committee member shall ensure that in designating vending zones under subsection (1), provisions are made for persons living with a disability.

(b) in sub-clause (7) by deleting the words “ten thousand shillings” appearing immediately after the words not exceeding and substituting therefor the words “two thousand” shillings.

CLAUSE 10

THAT clause 10 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2)-

(2A) For purposes of subsection (2) the county executive committee member shall ensure that the vending plan takes into account accessibility to vending zones for persons living with a disability

CLAUSE 20

THAT clause 20 of the Bill be amended in subsection (1) by inserting the following new paragraph immediately after paragraph (g)-

(ga) ensure shop windows and traffic signs are not obscured and no open fire on a public road or public space.

CLAUSE 23

THAT clause 23 of the Bill be amended in sub-clause (3) by inserting the following new paragraph immediately after paragraph (c)-

(ca) trades in goods or services prohibited under this Act or any other written law.

The Chairperson urged the Members present to adopt the Committee report for the subsequent Tabling in the Senate.

The Committee report on the Street Vendors (Protection of Livelihood) Bill, (Senate Bills No. 7 of 2021) was unanimously adopted after having been proposed by Sen. Philip Mpaayei, MP and seconded by Sen. Mohamed Faki, MP.

The Committee acknowledged the support and cooperation by all the concerned stakeholders during the consideration and preparation of the Report.

It was resolved that the adopted report be prioritized for listing on the Order Paper for Tabling in the Senate during the subsequent week.

MIN. NO. 466/2021:

UPDATES ON THE COMMITTEE PARTICIPATION IN THE 7TH SACCO LEADERS CONVENTION THAT WAS HELD IN MOMBASA ON 23-25TH FEBRUARY, 2021

It was reported that the Committee had been facilitated to participate in the 7th Sacco Leaders Convention that was held in Mombasa and specifically the Committee session that was conducted on 23rd February, 2022.

The Committee delegation was led by Sen (Dr.) Gertrude Musuruve, MP and included Sen. Mohamed Faki, MP and Sen. Mercy Chebeni, MP together with a section of the secretariat.

Members thanked the Chairperson for allowing the Committee to participate in the said event and observed that it was an eye opener for the committee to understand the scope of the operations of the Saccos and their demonstrable contribution to the economy and wellbeing of majority of Kenyans.

It was further reported that the Committee had requested that stakeholders present to always ensure their issues were brought before parliament through the available legislative mechanisms- either through legislative proposals or petitions.

It was also reported that some concerns had been raised by Mr. Daniel Marube, of the Co-operative Alliance of Kenya (CAK) who on behalf of the stakeholders urged the Committee to shelve the consideration of the Cooperative Societies (Amendment) Bill, (Senate Bills No. 17 of 2020, awaiting a more agreed upon version of the Bill from the Cabinet.

It was however noted that the Committee had already dispensed of with the Bill and the concerned stakeholders had been advised by the secretariat to make their reservations and representations at the National Assembly, which was currently considering the Bill.

It was resolved that the Committee will ensure constructive engagements with the Saccos fraternity to address any concerns that may arise from time to time.

MIN. NO. 467/2021: ANY OTHER BUSINESS

The Committee was informed that Mr. Crispus Njogu, Clerk Assistant, had been assigned to the Committee. Members welcomed Mr. Njogu to the Committee secretariat.

MIN. NO. 468/2021: ADJOURNMENT AND THE DATE FOR THE NEXT MEETING

There being no other business, the meeting adjourned at 11.43 am and the next meeting was scheduled for the subsequent week.

SIGNATURE:

CHAIRPERSON: SEN. (DR.) ABDULLAHI IBRAHIM ALI, CBS, MP)

MATRIX OF SUBMISSIONS (AND GENERAL RECOMMENDATIONS) RECEIVED ON THE STREET VENDORS (PROTECTION OF LIVELIHOOD) BILL 2021

Clause	Provision in the Bill	Proposed Amendment	Justification	Committee resolution
Clause 2 Interpretation	This Bill has not provided a definition for the “Authorized Officer.”	<i>Provide a definition as follows:</i> An Authorized Officer is a designated public officer who ensures street vendors comply with the provisions of this Act and shall have identification tags at all times. (ICPAK)	For clarity as this might create confusion in the enforcement of the provisions of this Act.	
Clause 4 Street Vending Unit.	(1) The Cabinet Secretary shall, by notice in the Gazette, designate a section or department within the Ministry responsible for matters relating to street vending as a street vendors unit for purposes of this Act. (2) The functions of the Unit shall be to — (a) maintain, in collaboration with county governments a national registry of street vendors in Kenya; (b) prescribe, in consultation with county governments and relevant stakeholders, the minimum standards for the conduct of street vending and regulation of street vendors in Kenya; (c) collect and utilize data relating to street vending and street vendors	Delete the provision (COG)	Trade is a fully devolved function in accordance with the fourth schedule of the Constitution. Further, the function of trade was unbundled and transferred to the counties vide Kenya Gazette Supplement No. 10 of 1 st February 2013, particularly markets. As such, the function belongs to the county.	

Clause	Provision in the Bill	Proposed Amendment	Justification	Committee resolution
	<p>in Kenya for planning and efficient management of street vendors;</p> <p>(d) prescribe fees and other charges payable for the registration of street vendors under this Act;</p> <p>(e) liaise with all relevant bodies responsible for planning and infrastructure for the proper planning and design of street vending zones;</p> <p>(f) advise the Cabinet Secretary on matters relating to street vending in Kenya; and</p> <p>(g) carry out any other activity incidental or conducive to the carrying out of its functions under the Act or regulations made under the Act.</p>			
		<p>Delete the entire Part II without a replacement and by extension all the terms interpreted in relation to this part and any reference to obligations of the National Government as a regulator. (NGEC)</p>	<p>The provisions in the entire Part II seek to give mandate to the National Government to regulate street vending. This is a function of the county governments in Schedule 4, Part 2, line 7 of the Constitution as follows;</p>	

Clause	Provision in the Bill	Proposed Amendment	Justification	Committee resolution
Clause 5 Headquarters of the Unit	(1) The headquarters of the Unit shall be in Nairobi. (2) The Cabinet Secretary may establish such other offices of the unit anywhere in Kenya as may be necessary for the discharge of the provisions of this Act.	<i>Amend section 5(2) to read as follows:</i> (2) The Cabinet Secretary shall delegate powers to the Committee of the County Assembly to establish such other offices of the unit within the county headquarters under the Ministry of trade as may be necessary for the discharge of the provisions of this Act. (ICPAK) Delete the provision (COG)	This is for ease of coordination and efficiency in the discharge of the duties of the unit. Using already established structures will also help in saving costs likely to be incurred. Trade is a function of the county governments and as such there is no need to have a Unit at the National Government as it will result in duplication of function.	
Clause 6 Director	The Unit shall be headed by the Director responsible for trade within the Ministry.	Delete the provision (COG)	Trade is a function of county governments and as such there is no need to have a Unit.	

Clause	Provision in the Bill	Proposed Amendment	Justification	Committee resolution
Clause 7 Staff of the Unit	The Cabinet Secretary shall designate such public officers, from within the Ministry as are necessary to serve in the Unit for the proper and efficient discharge of the functions of the Unit under this Act.	Delete the provision (COG)	Trade is a function of county governments and therefore the Cabinet Secretary does not need to designate any officers.	
Clause 8 Designation of vending zones	1) Each county executive committee member shall, by notice in the county Gazette, demarcate and designate the county into vending zones as follows — (a) restriction-free vending zones; (b) restricted vending zones; or (c) no-vending zones. (2) For purposes of subsection (1), the county executive committee member shall take into consideration the commercial viability of an area proposed to be designated as a street vending zone. (3) A restriction-free vending zone shall be an area in which a validly licenced street vendor may conduct vending activities. (4) A restricted vending zone shall be a zone in which a validly licensed street vendor may conduct vending activities subject to special permission granted by the county	a. <i>Amend by inserting an additional clause as follows;</i> “Each county executive committee member shall reserve at least 5% accessible space for persons living with disabilities in the vending zones.” b. To amend sub clause 7 by substituting the penalty of six months and or a fine of not less than ten thousand shillings with the following; “with a fine of one thousand five hundred as a first offender and revocation of the license on the second time.” (NGEC)	“street vendors” means a person engaged in vending of articles, goods, wares, food items or merchandise of everyday use or offering services to the general public in a street lane, sidewalk, footpath, pavement, public park or any other public place or private area, from a temporary built-up structure, and includes a hawker, peddler and all synonymous terms of the word; The Title of the Bill i.e. Protection of Livelihood and the above interpretation of street vendors is self-telling of a group of persons (“Wanjiku”) whose turnover is not that much at the end of the day and imposing such a fine which is way beyond their means is not only destroying the business/livelihood but also bringing suffering to the dependants who include children and the elderly parents. The sanctions imposed contradict the spirit of the law.	

Clause	Provision in the Bill	Proposed Amendment	Justification	Committee resolution
	<p>government pursuant to applicable county laws.</p> <p>(5) A no-vending zones shall be a zone in which vending activities are prohibited.</p> <p>(6) The county executive committee member shall not designate a market as a no-vending zone.</p> <p>(7) A person who conducts vending activities in in a restricted vending zone without a special permit or in a no- vending zone commits an offence and is be liable, on conviction, to a term of imprisonment not exceeding six months and a fine not exceeding ten thousand shillings, or to such fine and imprisonment .</p>			
Clause 10 Vending centres.	<p>(1) Each county government shall progressively provide for the construction and maintenance of vending centres to enable the carrying out of street vending activities in a fair, transparent and safe manner.</p> <p>(2) The county vending plan shall set out the location and optimal structure of vending centres to accommodate street vendors in the respective county.</p> <p>(3) The relevant State agencies shall take into account the adequate</p>	<p><i>Amend the clause by;</i> Inserting an additional sub clause (4) as follows; (4) The planning of the centre shall take into consideration of the universal accessibility of the roads and built environment. (NGEC)</p>	<p>Universal accessibility guarantees all persons including those with limited mobility to access the location and the amenities including the toilets.</p>	

Clause	Provision in the Bill	Proposed Amendment	Justification	Committee resolution
	<p>provision for vending zones and vending centres as proposed or identified in a county vending plan in the enactment of any physical planning legislation at county or national level.</p>			
<p>Clause 13 Obligation of the county executive committee member</p>	<p>The county executive committee member shall within twelve months of the commencement of this Act—</p> <p>(a) enact such county legislation as may be necessary for the implementation of this Act and the effective regulation of street vendors in the county;</p> <p>(b) monitor the implementation of this Act and any relevant county legislation on county vending;</p> <p>(c) periodically survey and assess the street vending activities in the county for policy-making purposes;</p>	<p><i>Amend to read:</i> The Cabinet Secretary in collaboration with county governments shall constitute oversight committees at each county level comprising of traders, people living with disabilities, residents and private sector to perform oversight function over the Street Vending Unit established at the counties.</p>	<p>This will ensure that all the stakeholders who are affected by these laws are included in the decision making. It will also entrench the values of independence and oversight.</p>	

Clause	Provision in the Bill	Proposed Amendment	Justification	Committee resolution
	<p>(d) formulate and implement the county vending plan; and</p> <p>(e) designate vending zones and periodic markets within the county, subject to the provisions of this Act, the regulations hereunder and any applicable county legislation.</p>	<p><i>Amend to read as follows:</i></p> <p>(d) formulate and implement the county vending plan and review after every five years. (ICPAK)</p> <p><i>Amend by including the proposal below;</i></p> <p>The county executive committee member shall periodically in collaboration with the relevant stakeholders formulate regulations to be enacted by the county assemblies on how to designate vending zones and periodic markets. (ICPAK)</p>	<p>The review will ensure the market dynamics and changes in the regulatory requirements are incorporated in the County Vending Plan.</p> <p>This provides a legislative underpinning to an important process whose outcome affects the public significantly.</p>	
<p>Clause 14 Register of street vendors</p>	<p>(1) The county executive committee member shall be responsible for the registration of validly licenced vendors within the respective county.</p> <p>(2) For purposes of subsection (1) the county executive committee member shall—</p> <p>(a) maintain an up to date register of all validly licenced street vendors in the county; and</p> <p>(b) submit to the Unit an up to-date list of all street vendors holding a valid licence in the respective county every three months.</p>	<p>Delete the provision (COG)</p> <p>Propose to delete sub clauses (2), (3) and (4) which make reference to the Director and Cabinet Secretary. (NGEC)</p>	<p>In order to ensure the ease of doing business for street vendors, there is no need to have multiple licenses. Once they have the license, they do not need to be registered again by the CEC.</p> <p>The Director and Cabinet Secretary are officers of the National Government.</p> <p>The function of the proposed Unit of the National Government stated in clause 4(2) c) i.e. “collect and utilize data relating to street vending and street vendors in Kenya for planning and efficient management of</p>	

Clause	Provision in the Bill	Proposed Amendment	Justification	Committee resolution
	(2) The Director shall collate the lists received under subsection (1)(b) into a national register of licenced street vendors; (3) The Director shall be the Registrar for the purpose of maintenance of the national registry of street vendors. (4) The Cabinet Secretary may make regulations to govern the day-to-day operations of the national registry.		street vendors” is in conflict with the sharing of functions between the two levels of government.	
Clause 15 Registration of street vendors.	(1) A person conducting street vending activities in any place in Kenya shall register as a street vendor with the respective county executive committee member. (2) A certificate of registration signed by the county executive committee member shall be conclusive evidence of registration as a street vendor.	Delete the provision (COG)	In order to ensure the ease of doing business for street vendors, there is no need to have multiple licenses or registration across counties. Once they have the license, they do not need to be registered again.	
Clause 19 Revocation of license.	(1) The county government shall have the power to renew any vending licence and may decline to renew, revoke or suspend a licence for a period not exceeding twelve months if it is satisfied that the street vendor is in breach of any provisions of this Act or any other written law.	Proposal to either establish a Tribunal under this Act or expand the mandate of an already existing tribunal with similar mandate. (NGEC)	All the processes as enumerated are in order save for sub clause (4) which refers to a relevant county Tribunal which is not established or disclosed.	

Clause	Provision in the Bill	Proposed Amendment	Justification	Committee resolution
	<p>(2) Before declining to renew, revoke or suspend a licence under subsection (3), the county government shall notify the holder of the licence to show cause, within fourteen days, why such licence should not be revoked, suspended or denied renewal.</p> <p>(3) The county government shall consider the application under subsection (4) within seven days and inform the holder of the licence of the county government's decision in writing and shall give reasons for the revocation or suspension.</p>			
	<p>(4) A street vendor aggrieved by the decision of the county government in the exercise of its powers under subsection (5) may appeal to the relevant county tribunal against the decision within thirty days of receipt of the decision.</p>			
<p>Clause 20 Handling of food.</p>	<p>(1) Any licensed street vendor and all persons working for the street vendor who are involved in handling of food shall —</p>	<p>(ICPAK) <i>Amend by inserting a new proviso to read as follows;</i> 20(3) County governments shall; i) keep the area where the street vendors operate clean by planning proper waste management and disposal policies.</p>	<p>This will ensure that the environment will be kept clean at all times to mitigate against the health hazards that arise from street vending. The provision on providing sanitizers and water points will help in containing the spread of virus. However, this provision should be reviewed once the government declares Kenya safe from Covid-19.</p>	

Clause	Provision in the Bill	Proposed Amendment	Justification	Committee resolution
		ii) make sure that no smoke or fumes or liquid escapes from the trading activity and pollutes the surrounding area. iii) ensure shop windows and traffic signs are not obscured and no open fire on a public road or public space. iv) provide water points for washing hands by those who utilize the street vending services. Delete the provision (COG)	This role is reserved for the Public Health Officers under the Public Health Act. There is no need to provide for the same in a different law.	
Clause 22 Right to adequate facilities.	(1) Every street vendor has the right, within vending zones and adjacent areas, as may be determined by the county executive member, to access essential facilities of reasonable quality including but not limited to security, lighting, sanitation services and parking facilities where necessary. (2) Each county government shall provide essential facilities for the carrying out of vending activities taking into consideration —	Proposal to amend sub clause (1) by inserting before the word “parking” the following: “accessible infrastructure, build environment.” (NGEC)	Accessibility of the infrastructure including of the amenities is crucial for both the vendors and the customers who have limited mobility including PWD’s.	

Clause	Provision in the Bill	Proposed Amendment	Justification	Committee resolution
	(a) the vending activity being conducted in a specific vending zone; (b) applicable health and safety standards; (c) the public interest; and (d) any applicable county legislation.			
Clause 23 Right to quiet possession of goods.	(1) Every registered and licensed street vendor has the right to quiet possession of their goods, subject to the provisions of this Act and the terms and conditions of their vending licence.	(ICPAK) <i>Amend by inserting the following immediately after 23(3)(d) to read;</i> e) leaves goods or trading assets unsupervised for more than eight hours; or f) trades in illegal goods and services prohibited under this Act.	This will entrench a sense of responsibility and reduce complaints and cases of lost goods.	
New provision	(2) Where a street vendor's goods or assets utilised for their street vending activities are confiscated under this Act, the officer confiscating the goods shall issue the street vendor with a receipt detailing (a) the specific goods confiscated; (b) the approximate value of the goods; (c) the reasons for confiscation (d) the location from which the goods may be recovered; (e) the time within which the confiscated goods must be recovered; and	Include a provision as follows: Any Authorized Officer or law enforcement officers found to breach the rights of vendors while confiscating their property shall be liable to prosecution if convicted. (NGEC) Propose to amend; a. By deleting sub clause 23(2) in its entirety and	This will force the enforcement officers to follow the law while enforcing the provisions of this Act. Confiscation of goods of the vendor serves only to impoverish the vendor as they maybe of a perishable nature or be damaged during the confiscation and or storage.	

Clause	Provision in the Bill	Proposed Amendment	Justification	Committee resolution
	<p>(f) such other information as may be prescribed by county legislation.</p> <p>(3) Notwithstanding the provisions of subsection (1), an authorized officer may confiscate goods where—</p> <p>(a) one carries out street vending without a licence;</p> <p>(b) breaches a condition of a licence issued under this Act or county legislation;</p> <p>(c) carries out vending activities in a no-vending zone; or</p> <p>(d) carries out vending activities in a manner contrary to any conditions imposed for vending in a restricted vending zone.</p> <p>(4) A person who contravenes the provisions of this section commits an offence and is liable, on conviction, to a term of imprisonment not exceeding one year and a fine not exceeding two hundred thousand shillings, or to such fine and imprisonment.</p>	<p>b. Amend sub clause 23(3) by deleting the words “may confiscate goods where” after the word “officer” and substitute with the following, “may take an inventory of the goods for purposes of taking legal action.”</p> <p>c. Amend 23(4) by substituting the penalties the fine of two hundred thousand with two thousand and the conviction term from one year to one month.</p>	<p>The spirit of the law must be kept alive which is protection of livelihood.</p> <p>The inventory taken by an authorized officer will be used as evidence for contravention of the license requirements.</p> <p>The penalty proposed in the Bill is not proportional to the breach committed by the vendor. We agree that there has to be order and compliance to the rules set but they must be proportionate and not serve to bring extreme punishment and destruction of the livelihood of the vendor and their family.</p>	

Clause	Provision in the Bill	Proposed Amendment	Justification	Committee resolution
Clause 24 Fines and penalties	(1) An officer of the national or respective county government shall not harass a street vendor in the course of conducting their vending activity. (2) A person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction, to a term of imprisonment not exceeding one year and a fine not exceeding two hundred thousand shillings, or to such fine and imprisonment.	The Institute proposes a fine one hundred thousand shillings and a term o imprisonment not exceeding six months. (ICPAK)	This proposal factors in the income levels of those street vendors and what can help them sustain their livelihoods.	
Clause 29 General penalty.	A person who contravenes the provisions of this Act is liable, on conviction, to a fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding one year or to such fine and imprisonment.	Proposal to delete the entire clause without any replacement and instead identify each breach/offence in the Bill and prescribe a proportionate penalty. (NGEC)	The penalty is too stiff for such a minor breach of license rules.	
Clause 30 Regulations.	The Cabinet Secretary may make regulations for the better carrying out of the provisions of this Act.	Amend by substituting the word Cabinet Secretary with county executive committee member. (NGEC)	This is a county government mandate.	

